

a penalty of 5 percent of the tax due but unpaid. For additional penalties for failure to pay tax, see 27 CFR 70.97.

(26 U.S.C. 5684(a) and 5761(b))

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Assessable Penalties

§ 70.111 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by Subchapter B, Chapter 68, of the Internal Revenue Code shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Internal Revenue Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by Subchapter B of Chapter 68.

(b) *Person defined.* For purposes of Subchapter B of Chapter 68 of the Internal Revenue Code, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(26 U.S.C. 6671)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.112 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 of the Internal Revenue Code applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over

such taxes. No penalty under section 6653 of the Internal Revenue Code, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

(26 U.S.C. 6672)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.113 Penalty for failure to supply taxpayer identification number.

(a) *In general.* Except as provided in paragraph (b) of this section, any person who is required by the regulations under section 6109 of the Internal Revenue Code to include the taxpayer identification number in any return, statement, or other document, fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of \$50 for each such failure, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed \$100,000. For returns having a due date (determined without regard to extensions) after December 31, 1986, the total amount imposed on such person for all such failures during any calendar year shall not exceed \$100,000. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If any person who is required by the regulations under section 6109 of the Internal Revenue Code to supply a taxpayer identification number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the appropriate ATF officer that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(c) *Persons required to supply taxpayer identification numbers.* For regulations under section 6109 of the Internal Revenue Code relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

(26 U.S.C. 6723)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated and amended by T.D. ATF-301, 55 FR 47606, 47615, Nov. 14, 1990]